

EXHIBIT A

**EXCERPTS OF DEPOSITION OF DIANE F. BRENDEN
(FEBRUARY 8, 2006)**

1 IN THE UNITED STATES DISTRICT COURT FOR THE
 WESTERN DISTRICT OF PENNSYLVANIA

CONSOLIDATION COAL COMPANY,)

Plaintiff,)

VS.)

UNITED STATES DEPARTMENT OF)

THE INTERIOR, NATIONAL PARK)

SERVICE,)

and $\gamma = \frac{1}{2}$ and $\gamma = \frac{1}{3}$ respectively. The results are shown in Figure 1. The results show that the error decreases as the number of points increases. The error is also smaller for $\gamma = \frac{1}{2}$ than for $\gamma = \frac{1}{3}$.

CAROL D. SCHULL, individually)

and in her capacity as the)

Keeper of the National Register)

of Historic Places,)

and $\gamma = \frac{1}{2}$ and $\gamma = \frac{1}{3}$ respectively.

ROY BRENDDEL and DIANE BRENDDEL,)

Defendants.)

15 - - - -

DEPOSITION OF: DIANE F. BRENDEN

DATE: February 8, 2006
Wednesday, 9:30 a.m.

LOCATION: Thorp Reed & Armstrong
 14th Floor
 One Oxford Centre
 Pittsburgh, PA 15219

TAKEN BY: Consolidation Coal Company

REPORTED BY: Keith G. Shreckengast, RPR
Notary Public
AKF Reference No. KS92307

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1 Q. What were those, please? You're reading from
2 what, the original or the supplement?

3 A. I don't know. Should I start with the
4 original?

5 Q. That might be better, yes.

6 A. The thing is some of these I don't have
7 documents for, it was just somebody telling me
8 something.

9 Q. That's what I'm asking you, are there any
10 paragraphs as to which you had no documents to
11 respond with; and if so, which one?

12 MR. HOOK: Joe, I think you're asking
13 her to give you a legal conclusion. In general
14 all these documents respond to your request.
15 And she's not required to tell you anything
16 specifically about whether a particular
17 document applies to a particular request.

18 MR. KATARINCIC: She is required. If
19 you want, I'll ask her to give me everything
20 you're producing in response to paragraph 1.

21 MR. HOOK: And I'll tell her not to
22 respond.

23 MR. KATARINCIC: You're serious?

24 MR. HOOK: Yes.

25 MR. KATARINCIC: Alright, I'll ask

1 her.

2 BY MR. KATARINCIC:

3 Q. What documents did you produce here today in
4 response to paragraph 1, Exhibit A, of your
5 notice?

6 MR. HOOK: Don't respond.

7 Q. Do you know, ma'am?

8 MR. HOOK: Don't respond to that
9 question.

10 Q. Do you know what documents you produced, that's
11 all, in response to paragraph 1?

12 MR. HOOK: Don't respond to that
13 question.

14 MR. KATARINCIC: On what basis?

15 MR. HOOK: You're asking for mental
16 impressions and legal conclusions. What
17 particular documents respond to paragraph 1 are
18 a result of my work product. You're not going
19 to ask for that.

20 MR. KATARINCIC: I will ask you the
21 same question for each and every paragraph of
22 Exhibit A to the deposition notice, which goes
23 to 21 paragraphs.

24 MR. HOOK: Joe, just save your
25 breath, the same response to all of them.

1 MR. KATARINCIC: Let's be courteous,
2 Dave, please. I will just tell you my
3 judgment, that's a totally improper objection.
4 You have no right to direct her so. And she
5 will most likely end up coming back here when
6 we go to the Court.

7 MR. HOOK: Fine.

8 BY MR. KATARINCIC:

9 Q. Do you know whether any documents though picked
10 up and encompassed by Exhibit 1, Exhibit 1A
11 were held back and not produced?

12 A. I have no idea.

13 Q. You don't know?

14 A. Huh-uh.

15 Q. Are there any documents that you know as to
16 which attorney client privilege was asserted?

17 A. I have no idea.

18 Q. Did you have any discussions along those lines
19 with anybody?

20 A. No.

21 Q. Do you know if any documents were withheld on
22 the basis of, as Mr. Hook said, attorney client
23 privilege, or more specifically work product
24 privilege, which means documents of your lawyer
25 and things he prepared and helped you with and

1 so forth?

2 A. I have no idea.

3 Q. You don't know. Do you know who would know
4 what was withheld because of privilege, either
5 work product or attorney client?

6 A. Unless my lawyer knows. I don't know.

7 Q. How about your husband, did he ever discuss
8 that with you?

9 A. No, we don't think in terms like these. And we
10 don't communicate in terms like these. So I
11 really don't know.

12 Q. You don't know whether or not any were withheld
13 because of privilege?

14 A. Not that I know of.

15 Q. Just answer my question, that's all.

16 A. I'm trying.

17 MR. HOOK: Joe, she has answered your
18 question.

19 MR. KATARINCIC: I'm trying to put
20 her at ease, she's very apprehensive.

21 MR. HOOK: You're not putting her at
22 ease, you're asking her the same question
23 twice. If you keep it to the point, she'll be
24 much more at ease.

25 MR. KATARINCIC: I'm very capable of

1 doing that.

2 MR. HOOK: We appreciate that.

3 BY MR. KATARINCIC:

4 Q. Did you ever discuss with your husband -- he's
5 writing some notes here -- did you ever discuss
6 with him whether or not anything was withheld?

7 A. No.

8 Q. How did you and your husband go about
9 collecting all these documents that you're
10 producing here today?

11 A. We went through file cabinets and folders and
12 boxes and picture albums and cupboards, just
13 looking for anything that pertained to whatever
14 you might have wanted.

15 Q. And you're satisfied you produced everything
16 that you could locate?

17 A. Yes. We spent a long time doing it.

18 Q. I appreciate your help on that, ma'am.

19 MR. KATARINCIC: Dave, how do you
20 want to identify these boxes? You have what,
21 six, and then that one container.

22 Would you mark an exhibit on each
23 box.

24 MR. HOOK: Mr. Brendel informs me
25 that each box will contain, if there's

1 A. If I can't --

2 MR. HOOK: You can answer in a
3 general manner why you contacted the attorney,
4 but you don't have to say what you said to the
5 attorney.

6 THE WITNESS: I see.

7 BY MR. KATARINCIC:

8 Q. Anything up to the point where you talked to
9 Mr. Hook? Why did you contact him?

10 A. I wanted to find out what the ramifications of
11 all this was, and if there was anything he
12 could do to help us.

13 Q. Did anybody contact you before you contacted
14 Mr. Hook about this to represent you in this
15 matter?

16 A. No.

17 Q. When did you take any action to have the
18 property in question put on the National
19 Register of Historical Structures with respect
20 to say '97 is when you got the letter, March,
21 when after that did you decide to do that?

22 MR. HOOK: I'm going to object.
23 There's nothing that indicates that they did it
24 before or after at this point.

25 MR. KATARINCIC: That's not a proper

1 objection, Mr. Hook, it's a speaking objection.
2 You're coaching the witness. If I take you to
3 the judge you'll be sanctioned.

4 MR. HOOK: Take me to the judge.

5 MR. KATARINCIC: You are going. This
6 is not Greene County.

7 MR. HOOK: I know where we are, we're
8 in your office here. But Joe, you cannot ask a
9 witness a misleading question like that.

10 MR. KATARINCIC: Repeat the question,
11 which he says is misleading.

12 - - - -

13 (The record was read back by the Reporter.)

14 - - - -

15 BY MR. KATARINCIC:

16 Q. You have to answer that, ma'am.

17 A. It's hard for me to answer it, because it
18 happened before that. That's what I'm having
19 trouble answering.

20 Q. When did it happen before you got the letter?

21 A. I remember distinctly -- well, first of all,
22 ever since we had moved into the house and
23 people would come and tell us --

24 Q. Ma'am, I apologize for interrupting. When
25 before that --

1 MR. HOOK: Mr. Katarincic, she's
2 answering your question. Don't interrupt her.

3 MR. KATARINCIC: I'm not
4 interrupting. She goes into these --

5 MR. HOOK: Yes, you are,
6 Mr. Katarincic. She's answering your question.

7 MR. KATARINCIC: Don't point your
8 finger at me.

9 MR. HOOK: I'm pointing my finger
10 because I'd like to make a point with it.
11 Don't interrupt her. If you do not conduct
12 yourself in a proper manner, we will simply
13 terminate the deposition. While she's
14 speaking, you do not speak. When she finishes,
15 you may speak. I will do the same for you, you
16 do the same for me. Is that okay,
17 Mr. Katarincic.

18 MR. KATARINCIC: Your admonitions are
19 juvenile.

20 BY MR. KATARINCIC:

21 Q. Please answer my question.

22 A. I just want to tell the whole story.

23 Q. I just want to know when did you first decide
24 to --

25 A. Then let me tell my story.

1 Q. Give me your whole big story, go ahead.

2 A. When we first moved in, we've had the people
3 stopping and telling us about their
4 grandfathers and all that. Then we had
5 tourists, people who would come just to look at
6 the house and drive by. So we started thinking
7 we've got something really special here. Then
8 in 1995 I met a woman who came to my brother's
9 shop at the Urban Flower Farm, and she knew my
10 sister-in-law very well. And they started
11 telling me about how this woman was putting her
12 house on the National Historic Record. And she
13 said to the woman my sister-in-law has a
14 beautiful house. And the woman knew the house.
15 And she said to me you ought to think about
16 putting it on the National Historic Record.
17 And I talked to Roy about it. And we said
18 well, heck, we don't even know what all is
19 involved. Well, if we get the papers together,
20 so we started gathering papers in 1996. Then
21 my daughter got married, everything was up in
22 the air for a year. And it was 1997, and
23 that's when we decided to go ahead with our
24 plans to do it.

25 Q. When did you first -- do you have any writing,

1 first I kind of dismissed it. But then I
2 thought well, gee, why not. There's a lot of
3 historical places in Greene County. It would
4 be nice to be designated as a national historic
5 treasure. So I talked to my husband about it.
6 We started doing a little bit of research with
7 the Major's boxes of correspondence, and
8 original drawings and maps, started putting
9 things together. And then I called this same
10 woman and said can you recommend somebody to
11 help us do this process.

12 MR. HOOK: Let's stop here a minute,
13 Joe. While you're questioning Mrs. Brendel,
14 your associate, Lauren Rushak, is taking
15 materials from various boxes out of various
16 files and bringing them over to you outside of
17 the file. I don't mind her getting the files
18 out, but I would request that she not remove
19 them from a file and bring them to you. We're
20 eventually going to have a bunch of materials
21 and not know where they're going back to.

22 MR. KATARINCIC: I don't know what
23 the problem is.

24 MR. HOOK: The problem is I don't
25 want them mixed up. Can we agree that that

1 A. Exactly.

2 Q. And that was after, though, you got the notice
3 from the coal company?

4 A. Uh-huh.

5 Q. To what extent did the decision of the coal
6 company to undermine your property have on your
7 deciding to retain an expert?

8 A. I didn't see it as being related at all.

9 Q. You did that completely independently?

10 A. Exactly.

11 Q. And you waited from '95 until '97 or '98 --

12 A. As I say --

13 Q. May I finish, please? You waited from '95 to
14 '98 to make that inquiry of an expert?

15 A. Yes.

16 Q. And you're saying that the decision of Consol
17 to undermine your property had no bearing on
18 your --

19 MR. HOOK: Asked and answered. You
20 already asked her that.

21 MR. KATARINCIC: I haven't even asked
22 the question yet.

23 MR. HOOK: You asked the question.
24 You just asked it two minutes ago. We can go
25 back through the record if you'd like.

1 Register?

2 A. Yes, we had done all the research.

3 Q. So the answer is yes to my question?

4 A. Yes.

5 Q. Well, let me tell you, between March of '97

6 when you received this letter, until

7 Mr. Jenkins came to your structure, your house,

8 and talked to you, did you write to Consol, or

9 call Consol, say gentlemen, I'm thinking of

10 putting this house on the National Register,

11 you should not undermine here?

12 A. No.

13 Q. You did not alert them to the fact that you

14 were putting this on the National Register?

15 A. No.

16 Q. Did you tell Mr. Jenkins that?

17 A. No.

18 Q. And Mr. Jenkins was in in the spring, I believe

19 you said, of 2000?

20 A. If I recall properly.

21 Q. Pardon?

22 A. If I'm recalling properly, yes.

23 Q. That's your best recollection now?

24 A. Yes.

25 Q. Is there any reason why you didn't tell

1 Mr. Jenkins that we're thinking of putting this
2 property on the National Register, it should be
3 on the Register and you should not mine?

4 MR. HOOK: Joe, I'm going to object.
5 When she met with Mr. Jenkins in 2000, it was
6 on the Registry. So she couldn't logically
7 tell him she's thinking of putting the house on
8 the Registry at a meeting when it's --

9 MR. KATARINCIC: Alright, my --

10 MR. HOOK: Don't interrupt me. --
11 when it's already on the Registry. Would you
12 not interrupt me, please? Can we agree to that
13 ground rule?

14 MR. KATARINCIC: Please don't be so
15 foolish. Say what you're going to say.

16 MR. HOOK: Do not interrupt me.

17 MR. KATARINCIC: I won't listen to
18 you.

19 MR. HOOK: I don't care if you listen
20 to me or not, just don't interrupt me. I want
21 my statements to be on the record without you
22 trying to talk over me. That's common courtesy
23 in the legal practice, and I think you should
24 know about that by now.

25 MR. KATARINCIC: Do you have anything

1 else to say?

2 MR. HOOK: No.

3 MR. KATARINCIC: Alright, sir.

4 BY MR. KATARINCIC:

5 Q. I apologize for apparently mixing up the dates.

6 I didn't know that. When was this house

7 actually officially put on the National

8 Register?

9 A. In May of 1999.

10 Q. When did you formally submit a request to have

11 this property put on the National Register?

12 A. I don't recall the date.

13 Q. Approximate, ma'am?

14 A. I believe it was six months prior to that, I

15 believe, but I'm not sure.

16 Q. You indicated May of '99 the house was

17 officially designated. You think approximately

18 six months before May of '99 you sent a written

19 request to have it so designated?

20 A. Yes.

21 Q. Is that request here in the files, ma'am?

22 A. It should be.

23 Q. Who prepared that document?

24 A. Clinton Piper.

25 Q. Did he do that after the report was prepared by

1 attempted to build homes that were reminiscent
2 of the places to which they had vacationed.

3 Q. What do you understand this Spanish Revival
4 architecture is?

5 A. It resembled original Spanish architecture
6 which these people had seen in their travels.
7 And they added their own little touches to it
8 to make it a little more Americanized.

9 Q. I'm asking you not what they said, what do you
10 understand?

11 A. That's my understanding of what it is.

12 Q. Please, ma'am, what I would like -- not what
13 you mean of what other people said, what is
14 your understanding, please?

15 MR. HOOK: She just told you.

16 MR. KATARINCIC: No, she didn't.

17 MR. HOOK: She just told you what she
18 understood it to be. Don't argue with her.
19 That's her answer, move on.

20 BY MR. KATARINCIC:

21 Q. I want to ask you about this Spanish Revival.
22 What are the peculiar features of Spanish
23 Revival architecture?

24 A. Patios.

25 Q. Patios?

1 A. I had not the actual tree, but from the palm
2 tree family, that looked exotic.

3 Q. So it's the plantings such as palm trees that
4 are one of the factors in deciding that the
5 veranda is of a Spanish Revival style?

6 A. Those are just my ideas. I have not been
7 schooled in this.

8 Q. I understand. I asked you what was your
9 understanding?

10 A. Yes.

11 Q. What is your answer to my question?

12 A. I just got done answering your question.

13 MR. KATARINCIC: Read it back,
14 please.

15 - - - -

16 (The record was read back by the Reporter.)

17 - - - -

18 A. That's probably just my idea of what --

19 Q. How about the intricate ironwork, I believe you
20 said, explain that, please.

21 A. What do you want me to explain?

22 Q. What is intricate about it?

23 MR. HOOK: What is the relevance of
24 these questions, Mr. Katarincic?

25 MR. KATARINCIC: I don't have to

1 explain it to you.

2 MR. HOOK: Then I'm going to instruct
3 her not to answer. These are not eliciting
4 facts that are in any way relevant to this
5 case. This house was put on the Historic
6 Register based on documents prepared by Clinton
7 Piper. This person is not trying to justify
8 with her own background the listing of the
9 house on the Historic Register. For you to
10 keep asking these inane questions, without any
11 hint at relevance, is simply unreasonable,
12 burdensome, and a total waste of her time. So
13 move on.

14 MR. KATARINCIC: I'm not moving on.

15 MR. HOOK: Yes, you are.

16 BY MR. KATARINCIC:

17 Q. Tell me what is the intricate ironwork that you
18 said is part of the decision or determination
19 that a structure is of Spanish Revival?

20 MR. HOOK: Don't answer.

21 Q. But the idea that this was a Spanish Revival
22 structure was the basis for your going to have
23 it designated, was it not?

24 MR. HOOK: Don't answer.

25 Q. What was your basis for having it designated?

1 MR. HOOK: She told you why. She's
2 answered that question, Mr. Katarincic, if you
3 would pay attention. She answered it twice.
4 She felt it was a historic structure. She was
5 advised it was a historic structure by
6 Mrs. Williams. And she hired somebody to
7 determine whether it was. And that's why it
8 was placed, because Mr. Clinton Piper did his
9 investigation. You've been told all of this in
10 detail earlier.

11 MR. KATARINCIC: You understand
12 you're just coaching this witness?

13 MR. HOOK: No, I'm not coaching this
14 witness. I'm repeating back to you her
15 testimony, which you apparently refuse to
16 acknowledge.

17 MR. KATARINCIC: You're coaching this
18 witness. This is not permitted under the
19 Federal Rules.

20 BY MR. KATARINCIC:

21 Q. Is there any intricate ironwork on your
22 structure?

23 A. Yes.

24 Q. And where is it located?

25 A. There's an intricate iron railing around the

1 kitchen porch. There's an intricate iron
2 railing around the side porch. There's an iron
3 railing around the back veranda. There's an
4 iron railing around the veranda by the bedroom.
5 There's an iron gate actually inside the house
6 leading from one room to another. There is an
7 actual cutout in the stairway with an iron gate
8 through which you can see into the next
9 hallway.

10 Q. And what, aside from the number of ironwork or
11 iron railings, is there anything about your
12 characteristics that's peculiar to Spanish
13 Revival?

14 A. I don't know.

15 Q. So you're basically saying a large number of
16 them is indicative of Spanish Revival?

17 A. I'm saying I don't know if it's indicative of a
18 Spanish Revival. I leave that to the experts.

19 Q. I know Mr. Hook suggested you should say that,
20 but is that your real answer?

21 A. He's not suggested anything to me. I'm trying
22 to tell you about my intricate iron, and you
23 keep asking me about it. I don't know what
24 else to say about intricate iron.

25 Q. That's fine. If that's all you know, that's

1 fine. Let's go to the -- you said columns.
2 Are there columns?
3 A. Yes.
4 Q. What was there about these columns that
5 supported or related to a Spanish Revival type
6 structure?
7 A. Again --
8 MR. HOOK: Mr. Katarincic, stop. She
9 explained to you that columns to her
10 understanding are one of the elements of
11 Spanish Revival architecture. You've just
12 asked her that question again.
13 Q. Will you describe these columns to us, please?
14 A. They're just columns.
15 Q. How high, how large, what is peculiar about
16 them?
17 A. They go from the patio, they hold up, actually
18 support one of the bedrooms. And they go along
19 the entire porch.
20 Q. These are concrete?
21 A. Concrete. No, not concrete. They're concrete
22 and steel.
23 Q. So they're hollow in the center?
24 A. I don't know.
25 Q. You can see the steel when you look at the

1 column?

2 A. They're painted. I don't know what they are.

3 Q. You said they were steel.

4 A. Well, I'm assuming they're steel.

5 MR. HOOK: What's the relevance of
6 this? You could go out there and look at this
7 house. This is harassing this witness. If you
8 don't want to ask her stuff that's relevant,
9 we're going to end this thing.

10 MR. KATARINCIC: It's your decision
11 what to do.

12 MR. HOOK: Move it along.

13 MR. KATARINCIC: I'll move it as I
14 see appropriate. If you want to hustle
15 business in Greene County, put a sign up, don't
16 do it in here.

17 MR. HOOK: What kind of comment is
18 that, Mr. Katarincic?

19 BY MR. KATARINCIC:

20 Q. Will you describe these columns to us as best
21 you can?

22 A. They're white columns. I know that they have a
23 cement base. What the actual columns are made
24 of, I don't know.

25 Q. How many of these columns are there?

1 Q. Are they Spanish Revival?

2 A. I don't know what they are. I just know that
3 they're part of the Register.

4 Q. So every building, I take it, on the land
5 that's in question here is registered, is a
6 historic landmark?

7 A. Yes.

8 Q. Can you tell me what there is about the pigpen
9 that would make it part of the National
10 Register?

11 A. I have no idea.

12 Q. Do you know?

13 MR. HOOK: She just said she has no
14 idea.

15 A. I have no idea.

16 Q. How about the horse barn?

17 A. No idea.

18 Q. Did you ask that they be put on?

19 A. No, I did not. But I do remember Mr. Piper
20 saying to me that the National Register tended
21 to put compounds on. Like if it was a working
22 farm, and it was historical, the house was
23 historical, then all the buildings were put on.
24 That was my understanding at the time. So I
25 never questioned it, and never thought about

- 1 A. No.
- 2 Q. Was the fact that the structure here and the
3 land was to be undermined, was that something
4 that was relayed to either the Pennsylvania or
5 the Federal officials in connection with your
6 application for designation?
- 7 A. One had nothing to do with the other.
- 8 Q. I didn't ask you that. I asked you did you
9 tell the Pennsylvania officials or the Federal
10 officials in connection with your application
11 for designation that the land was to be
12 undermined?
- 13 A. I did not, no.
- 14 Q. Do you know if they were told that?
- 15 A. I have no idea.
- 16 Q. You say it's unrelated?
- 17 A. To me it's unrelated.
- 18 Q. Did you examine the application made to the
19 Pennsylvania Historical Resource -- I'm sorry,
20 to the Pennsylvania Historical and Museum
21 Commission on the Bureau of Historical
22 Preservation as it was made for the structure?
- 23 A. Did I look at the what?
- 24 Q. The application to the Pennsylvania --
- 25 A. Yes.

1 Q. Do you remember telling it, telling the
2 Pennsylvania Commission, that this land was
3 threatened by undermining?

4 MR. HOOK: She's already answered
5 that, that she did not to her knowledge.

6 Q. Go ahead, ma'am.

7 MR. HOOK: That's her answer. She
8 doesn't have to answer it twice, Joe.

9 Q. Go ahead, ma'am.

10 MR. HOOK: Don't answer. You've
11 answered.

12 Q. I'm asking you was the Pennsylvania Historical
13 Museum Commission advised in writing at the
14 time of the application for designation that
15 the property was threatened with undermining?

16 A. I really don't remember.

17 Q. Did you examine it before it was submitted?

18 A. I'm sure that I did.

19 Q. You previously mentioned a meeting with
20 Mr. Jenkins, if you recall that?

21 A. Yes.

22 Q. Now just to go back up a little bit, at that
23 time Mr. Jenkins discussed with you the fact
24 that Consol was going to undermine the
25 property?

1 Q. So your answer is no?

2 A. No.

3 Q. You never talked to anybody about it?

4 A. No.

5 Q. Do you know if that view, in determining how
6 much should be paid to your client, somebody on
7 your behalf advanced, said look, it will cost
8 millions and millions to go around the Brendel
9 property, so we do want that money, rather than
10 you spending it going around that property, you
11 give us the money you save?

12 MR. HOOK: Do that again. That's the
13 worst question I ever heard. Try to make it a
14 nice question that anybody could understand.

15 MR. KATARINCIC: You must live in a
16 very pure world.

17 BY MR. KATARINCIC:

18 Q. Do you remember whether anybody discussed on
19 your behalf how much it would cost to mine
20 around your property?

21 A. No.

22 Q. Never heard of that?

23 A. No.

24 Q. Did you ever hear of that discussed before
25 today?

- 1 Q. Concrete repointing, masonry repointing?
- 2 A. No.
- 3 Q. Painting?
- 4 A. Painting.
- 5 Q. Any other kind of repair to the chimneys or
- 6 roof or anything?
- 7 A. Not that I can recall.
- 8 Q. So from '71 to end of '97, the only repair work
- 9 that you recall are these gutters and
- 10 downspouts and periodic painting, that's all?
- 11 A. Yes.
- 12 Q. Do you have any record to show what repair work
- 13 was done on the Thrall House from the time you
- 14 purchased it in '71 until the end of '97?
- 15 A. I don't think I still have any records like
- 16 that.
- 17 Q. Well, the only work you had done, you say, is
- 18 gutter and downspouts and painting?
- 19 A. That's all I can remember.
- 20 Q. Do you have records on that?
- 21 A. No, because that was years ago.
- 22 Q. I don't mean to belabor the point, and I
- 23 apologize, but in 26 years this is the only
- 24 thing you recall having been done, gutters,
- 25 downspouts and painting in terms of maintenance

1 or repair of the house?

2 MR. HOOK: Roof.

3 MR. KATARINCIC: That's your problem.

4 MR. HOOK: She mentioned roof earlier
5 on, and you left it out. It's not a problem,
6 you're being inaccurate.

7 MR. KATARINCIC: Throw in the roof,
8 too. You may need some Xanax, Mr. Hook.

9 A. Roof, too.

10 BY MR. KATARINCIC:

11 Q. Roof, downspouts and gutters, and painting in
12 that 26 year period is the only thing you
13 recall having done to the structure?

14 A. We put in a new tub.

15 Q. New bathtub, okay. What architectural style
16 was that?

17 A. I don't know what kind of architectural style.

18 Q. Spanish Revival?

19 MR. HOOK: She just said she doesn't
20 know.

21 A. I don't know what you would call it.

22 Q. Anything else besides the bathtub?

23 A. I can't think of anything else.

24 Q. Was there any work done with the laundry room
25 in that house in that 26 year period?

1 preparing information that was put into this
2 document 12A, which is a Second Amended Answer,
3 Counterclaim and Third Party Complaint?

4 A. I have no idea.

5 Q. No idea?

6 A. See, to you this is normal stuff, to me this
7 is --

8 Q. What I asked you was did you meet with anybody
9 to discuss facts that should or shouldn't be
10 placed into this document, that was all?

11 A. I don't think so. If I did see it, I don't
12 remember.

13 MR. KATARINCIC: We're going to go
14 through this Complaint to verify your
15 understanding of certain facts. So we'll take
16 a break for lunch. I suggest you look at that,
17 so we can go more quickly. We'll break for
18 about an hour.

19 MR. HOOK: On behalf of Mr. Brendel,
20 there have been brought to this deposition, in
21 response to the request for documents at the
22 deposition seven boxes of documents from the
23 Brendels' responses. We have asked that these
24 boxes not be delved into in our absence. We're
25 just beginning to take a break for lunch. Some

1 Joe.

2 MR. KATARINCIC: Do I understand
3 you're the custodian of these exhibits?

4 THE REPORTER: That's my
5 understanding.

6 MR. KATARINCIC: As the custodian,
7 you have no right to take them.

8 MR. HOOK: I gave you the ground
9 rules when I brought them up here. I told you
10 exactly what was going to be done. Now you're
11 trying to change that.

12 MR. KATARINCIC: One box you said.

13 MR. HOOK: No, I said everything that
14 we brought up was containing things that are
15 unique, personal to the Brendels, and could not
16 be duplicated.

17 MR. KATARINCIC: Can't be duplicated?
18 How are you going to duplicate them?

19 MR. HOOK: The originals cannot be
20 duplicated. These are original photographs
21 from their family albums that cannot be
22 duplicated if they're lost.

23 MR. KATARINCIC: We'll call the
24 Court.

25 BY MR. KATARINCIC:

1 Q. I was going through my notes here. Did you
2 indicate to me that you did not contemplate
3 ever replacing the Thrall House, you didn't
4 want to build another house?

5 A. No.

6 Q. You didn't want to replace this at all?

7 A. No.

8 Q. That was never discussed?

9 A. No.

10 Q. I was looking, if I can find it hurriedly --
11 Did you see, Mr. Hook sent a letter on December
12 8, 2005 to the Pennsylvania Department of
13 District Mining Operations, Mr. Plassio?

14 MR. HOOK: Don't answer it until he
15 shows you the letter.

16 MR. KATARINCIC: I haven't asked a
17 question yet.

18 BY MR. KATARINCIC:

19 Q. In here he says the following --

20 MR. HOOK: Do you have a copy to show
21 her?

22 MR. KATARINCIC: That's your letter.

23 MR. HOOK: Show her the letter.

24 MR. KATARINCIC: I will show her the
25 letter, if she wants to sit over here. I'll

1 give it to her when I'm done reading it.

2 BY MR. KATARINCIC:

3 Q. This is on the bottom of page 3, page 3 of a
4 letter of December 8, '05. Last paragraph: A
5 further point should be made, there has been
6 some discussion that the Brendels may replace
7 the Ernest Thralls house and the Ernest Thralls
8 tenant house rather than repair them. Has
9 there been such discussions?

10 MR. HOOK: Show her the letter.

11 You've taken something out of context. Show
12 her the entire document before you ask the
13 question.

14 Q. Have you ever had such discussions?

15 MR. HOOK: Don't answer the question
16 until he shows you the document.

17 Q. Have you ever had such discussions?

18 MR. HOOK: Don't answer the question
19 until he shows you the document.

20 Q. Do I understand you say there have been no such
21 discussions?

22 MR. HOOK: Don't answer the question
23 until you are show that document that he's
24 reading from.

25 Q. Were there ever such discussions?

1 MR. HOOK: Same instruction.

2 MR. KATARINCIC: Will you note that
3 to be reproduced immediately, that part of the
4 transcript.

5 BY MR. KATARINCIC:

6 Q. Forget the document, have you ever heard that
7 somebody was representing on your behalf to the
8 government of Pennsylvania that you were
9 contemplating replacing this house?

10 A. No.

11 Q. You never authorized anybody to say that?

12 A. No.

13 Q. So if this is a false statement to the state,
14 you're not responsible for it?

15 MR. HOOK: Do not answer it. He has
16 not shown you that document. It's quite
17 outrageous for him to take a sentence out of
18 context and trying to ask you a question about
19 it. Just don't answer it.

20 Q. Are you aware whether anybody ever represented
21 to the state that you and your husband,
22 Mr. Brendel, were contemplating replacing the
23 entire Thrall House?

24 A. No.

25 Q. You would not have authorized anybody to say

- 1 A. No.
- 2 Q. Mr. Hook did?
- 3 A. It would be something I would assume.
- 4 Q. Well, when he was introduced to you, what were
- 5 you told?
- 6 A. I was told this is a lawyer who is going to
- 7 help us.
- 8 Q. And who told you that?
- 9 A. Mr. Hook.
- 10 Q. Let's start going through this document, then,
- 11 please. Go to page I believe it's 5. There's
- 12 a paragraph number 31. Do you see that?
- 13 A. Yes.
- 14 Q. It says there: The plaintiff had actual notice
- 15 and commented and participated in the Thralls
- 16 historic property listing process. Do you know
- 17 that the plaintiff, Consolidation Coal, had
- 18 knowledge of the listing process?
- 19 A. I was told that.
- 20 Q. By whom, ma'am?
- 21 A. By Mr. Nixon, I believe.
- 22 Q. Mr. Nixon. Anybody else?
- 23 A. I can't think of anyone else.
- 24 Q. Did he tell you the basis for knowing that, how
- 25 he got to know it?

1 A. No. I accepted his word.

2 Q. Sure, I understand. You say and participated
3 in the historic property listing process. Do
4 you know that's true?

5 A. I just know what I was told by my lawyer.

6 Q. Mr. Nixon?

7 A. Yes.

8 Q. So the averments of paragraph 31 concerning
9 actual notice, commented and participated,
10 those statements, those facts you got from
11 Mr. Nixon?

12 A. I do believe, yes.

13 Q. Anybody else that you can think of?

14 MR. HOOK: Joe, you're repeating
15 yourself.

16 Q. Anybody else?

17 MR. HOOK: Move it along. You've
18 asked that question twice.

19 MR. KATARINCIC: I didn't ask anybody
20 else.

21 MR. HOOK: Yes, you did ask anybody
22 else. Go back to where he asked did anybody
23 else tell you that.

24 - - - -

25 (The record was read back by the Reporter.)

1 - - - -

2 MR. KATARINCIC: There's your
3 question.

4 MR. HOOK: Don't ask it again. I'm
5 not going to put up with this repeated picayune
6 question, question, question on the same thing.
7 Move it along.

8 MR. KATARINCIC: Would you repeat the
9 question to the witness?

10 MR. HOOK: She's not answering it
11 again.

12 MR. KATARINCIC: I'm just building a
13 record.

14 MR. HOOK: You're repeating the
15 record.

16 MR. KATARINCIC: To show the judge
17 your conduct. Read the question, and indicate
18 in the record what question you repeated to
19 her.

20 THE REPORTER: "Question: So the
21 averments of paragraph 31 concerning actual
22 notice, commented and participated, those
23 statements, those facts you got from Mr. Nixon?
24 Answer: I do believe, yes. Question: Anybody
25 else that you can think of?"

1 MR. KATARINCIC: She's not going to
2 answer it?

3 MR. HOOK: She's already answered it.

4 MR. KATARINCIC: For that reason,
5 she's not going to answer it?

6 MR. HOOK: Why should she answer it
7 twice?

8 MR. KATARINCIC: Okay, now you've
9 stated your position. That's all I wanted on
10 the record.

11 BY MR. KATARINCIC:

12 Q. Do you have any documents, any writings in your
13 possession, or have you ever seen any
14 documents, any kind of a writing that support
15 the allegations of paragraph 31, that
16 Consolidation Coal had actual notice and
17 commented and participated in the Thralls
18 historic property listing?

19 A. No.

20 Q. Has anyone shown you anything of that sort?

21 A. No.

22 Q. That would include Mr. Nixon?

23 A. Yes.

24 Q. Paragraph 39, page 6, your lawyers aver, quote,
25 paragraph 39, quote: At all times relevant and

1 Register, Consol would still be required to
2 follow the plan, because the house remains
3 eligible for a listing, he said. Is that a
4 false statement?

5 A. I have no idea.

6 Q. You understand that's his opinion of the coal
7 company, isn't it?

8 MR. HOOK: Same objection to the
9 extent you're asking the witness to make a
10 legal conclusion, it's objected to.

11 Q. Go ahead.

12 A. I answered it, I have no idea.

13 Q. So you don't know whether it's true or false?

14 A. No, I don't.

15 Q. But from your perspective this is an opinion of
16 the coal company?

17 A. I'm assuming it is.

18 Q. You don't know otherwise, do you?

19 A. No.

20 Q. Go to number 57. Hoffman caused or allowed a
21 letter to be wrote to the editor of the
22 Post-Gazette regarding the Brendels and their
23 home, the historical Thralls House titled
24 Readers Should Know the Rest of the Story
25 Regarding the Brendel Property to be published

1 with false and misleading statements in print,
2 and on the whole worldwide web of the internet
3 by the Post-Gazette. He said that this case is
4 about money. Is that true, it's about money to
5 repair your house?

6 A. I don't know if that's in context or not.

7 Q. Well, isn't that what you're basically
8 contending here, your house should be repaired
9 and you want damages in the form of money, or
10 the damage from the mining?

11 A. As I recall that article, though, that is taken
12 out of context.

13 Q. Well, I don't know what you mean by context,
14 but is this not your whole case, is being
15 adequately compensated for the damage?

16 MR. HOOK: Objection, you're asking
17 her about this phrase, which says this case is
18 about money. You're trying to take it out of
19 context and twist the characteristic of that
20 article.

21 MR. KATARINCIC: Mr. Hook, I don't
22 know how long you've been at the Bar, but
23 everything you've done in that last statement
24 is contrary to the Federal Rules, to the spirit
25 and the written Federal Rules.

1 MR. HOOK: I don't believe so,
2 Mr. Katarincic.

3 MR. KATARINCIC: Well, I do.

4 MR. HOOK: When you twist a factual
5 statement and take it out of context, that's
6 improper questioning of a witness.

7 BY MR. KATARINCIC:

8 Q. Then let me ask you, is it true --

9 MR. HOOK: Perhaps you should show
10 her the article and let it be read in context.

11 MR. KATARINCIC: She has the
12 Complaint in front of her.

13 MR. HOOK: The article.

14 MR. KATARINCIC: It's your article,
15 you prepared the Complaint.

16 MR. HOOK: Don't try to take it out
17 of context. I've seen Mrs. Rushak looking at
18 the article over there.

19 BY MR. KATARINCIC:

20 Q. Is this statement true, this case is about
21 money? If not, what else is it about?

22 A. That sentence is taken out of context. I know
23 this because I just recently reread that
24 article. And Mr. Hoffman made it appear that
25 we were making this case a case for money,

1 sixty-some thousand?

2 A. Roy and I have paid some of it. And Mr. Hook

3 has paid some of it.

4 Q. How much have you paid, you and Mr. Brendel?

5 A. We've paid about 18,000.

6 Q. Did you say a total of 60 originally?

7 A. Approximately.

8 Q. So Mr. Hook just paid 42,000; is that correct?

9 A. Uh-huh, yes.

10 Q. So when you say \$3 million, that's mostly cost

11 of repairing structures, and for these expert

12 costs?

13 A. And for other incidentals. For example at that

14 time we still had the wetlands that had to be

15 repaired, that we assumed would be a couple

16 hundred thousand dollars. And we didn't know

17 of any other incidentals that might come up

18 along the way. For example, the mold

19 mitigation that needs to be done, which is

20 close to another \$50,000.

21 Q. You're talking here about putting a price tag

22 on repairing the structure, not about clearing

23 up mold?

24 A. You can't repair --

25 MR. HOOK: Objection.

1 MR. KATARINCIC: I don't want to know
2 your arrangements.

3 MR. HOOK: Yes, you do.

4 MR. KATARINCIC: Read the question.
5 Don't mischaracterize it just to give
6 legitimacy to your phony objection. Read the
7 question.

8 - - - -

9 (The record was read back by the Reporter.)

10 - - - -

11 MR. HOOK: That is not an appropriate
12 question. She won't answer it.

13 Q. Go ahead.

14 MR. HOOK: No, don't answer it.
15 Don't ask her again.

16 MR. KATARINCIC: I will ask again. I
17 will ask anything I want to.

18 MR. HOOK: This is going to stop,
19 Joe. We'll stop and walk out of here.

20 MR. KATARINCIC: Do whatever you
21 wish. I remind you, you're not in Greene
22 County.

23 MR. HOOK: I know where I am, Joe.

24 MR. KATARINCIC: I'm doubtful about
25 that.

1 BY MR. KATARINCIC:

2 Q. In the \$3 million that is quoted here in the
3 newspaper, and which you say is the number,
4 within that you are including the legal fees to
5 be paid?

6 MR. HOOK: Asked and answered. Do
7 not answer it again.

8 Q. Is that true?

9 MR. HOOK: Asked and answered. Do
10 not answer it again.

11 Q. Did you tell Mr. Hoffman or anybody else that
12 the \$3 million number included the legal fees
13 for Mr. Hook?

14 A. No.

15 Q. You kept that to yourself?

16 A. It wasn't part of my experience at the time.

17 Q. But it was included in your number?

18 MR. HOOK: She's answered that
19 question. Don't answer it again.

20 Q. If it wasn't part of your experience at the
21 time, why did you come about including it?

22 MR. HOOK: Move on, Mr. Katarincic.

23 Q. Answer me, please.

24 MR. HOOK: Don't answer it.

25 MR. KATARINCIC: Your basis, sir?

1 MR. HOOK: You're asking her about
2 her arrangement between herself and her
3 attorney. You've asked these questions a dozen
4 times. They're all improper. Move on.

5 MR. KATARINCIC: I don't want to know
6 about your arrangements.

7 MR. HOOK: You just heard my
8 response.

9 MR. KATARINCIC: I just asked her in
10 the \$3 million number if she included the legal
11 fees you thought you'd have to pay Hook.

12 MR. HOOK: She's answered that
13 question. She's not answering it again. Don't
14 ask it again. If you ask it one more time,
15 we're out of here.

16 BY MR. KATARINCIC:

17 Q. What all made up the \$3 million?

18 MR. HOOK: She's answered that.

19 MR. KATARINCIC: No, she has not.

20 MR. HOOK: Yes, she has.

21 BY MR. KATARINCIC:

22 Q. Would you please answer, ma'am?

23 MR. HOOK: Don't answer.

24 Q. Break down the \$3 million and what made it up.

25 MR. HOOK: Don't answer. She's

1 already broken it down to you.

2 Q. Tell me how many dollars for this, how many
3 dollars for that, ma'am.

4 MR. HOOK: She's already answered it.
5 Don't answer it again.

6 MR. KATARINCIC: She's not answered
7 it.

8 MR. HOOK: Yes, she has.

9 BY MR. KATARINCIC:

10 Q. Break down the numbers that made up the
11 \$3 million.

12 MR. HOOK: She broke it down. Don't
13 answer.

14 Q. The only number I recall getting from you, if
15 I'm wrong, tell me, you said \$1.8 million?

16 MR. HOOK: Don't answer. You gave
17 him a series of numbers, and you don't have to
18 go through them again.

19 Q. You said 60,000. That's how much you told me
20 made up the \$3 million.

21 MR. HOOK: Mr. Katarincic, I'm
22 running out of patience here. She's not
23 answering these questions any further, period.
24 One more question in this area, we're out of
25 here.

1 MR. KATARINCIC: It's irrelevant to
2 me what your patience level is.

3 MR. HOOK: I'm telling you this to
4 see if you want us to continue with this
5 deposition or you want us to leave at this
6 point.

7 MR. KATARINCIC: I want you to
8 continue, and I have a right to ask the
9 questions.

10 MR. HOOK: Not repetitively. She's
11 finished on that subject matter.

12 BY MR. KATARINCIC:

13 Q. I just want to know what made up the
14 \$3 million.

15 MR. HOOK: We're done. On the
16 record, I'd like somebody sent up to pick up
17 these boxes.

18 MR. KATARINCIC: There's nobody to be
19 sent up. Those three boxes are in the custody
20 of the court, and you have no right to take
21 them. Mr. Reporter, do you understand that?
22 Are you asking that they be kept in your
23 custody?

24 THE REPORTER: It's my understanding
25 I'm the custodian of the records.

1 MR. HOOK: On the record, we had an
2 agreement when these were brought up here that
3 they would be made available for their
4 examination, we would return them to our
5 custody, we would make copies of what they
6 wanted to evaluate. As we've stated before,
7 there are original, unique family documents
8 throughout all of these boxes. They cannot be
9 replaced. We set the ground rules, and
10 Mr. Katarincic has unilaterally attempted to
11 change those ground rules. We are returning
12 these to my office. They will be available
13 there for Mr. Katarincic to look at.

14 MR. KATARINCIC: We'll see you here
15 tomorrow. Mr. Brendel is to go tomorrow. He's
16 scheduled for deposition.

17 MR. HOOK: He's not coming back
18 tomorrow until we arrive at some appropriate
19 ground rules.

20 MR. KATARINCIC: Ground rules on
21 what?

22 MR. HOOK: Just this right here,
23 you're making us carry these out of here.

24 MR. KATARINCIC: Leave them here
25 overnight.

1 MR. HOOK: I'm not going to leave
2 here.

3 MR. KATARINCIC: You don't trust the
4 reporter?

5 MR. HOOK: I told you beforehand they
6 were not to be left here. I told you that
7 before they were brought up here. You
8 obviously have no comprehension of your word.
9 And they are leaving, and they're not coming
10 back until we have some kind of agreement on
11 how they're to be handled. The fact that
12 you're making us carry them out of here to me
13 reflects you in its entirety, Mr. Katarincic.

14 MR. KATARINCIC: Because they're to
15 remain here.

16 MR. HOOK: You know perfectly well
17 what the original discussion was.

18 MR. KATARINCIC: Are they too heavy
19 for you to carry?

20 MR. HOOK: Yes, exactly, I happen to
21 have a ruptured disc in my neck.

22 MR. KATARINCIC: Well, then if it's
23 so bad, we'll get you somebody.

24 MR. HOOK: I appreciate your
25 consideration.

1 MR. KATARINCIC: We'll look for you
2 tomorrow again.

3 MR. HOOK: We won't be here,
4 Mr. Katarincic.

5 MR. KATARINCIC: We're moving for
6 sanctions, including fees against you.

7 MR. HOOK: Do whatever you want.

8 MR. KATARINCIC: We will.

9 MR. HOOK: Are you going to bring
10 somebody here for these documents or not?

11 MR. KATARINCIC: We'll send them down
12 to the street level.

13 MR. HOOK: We'll walk with them.

14 MR. KATARINCIC: Will those documents
15 be kept intact and nothing removed from the
16 boxes?

17 MR. HOOK: Of course.

18 MR. KATARINCIC: I don't know about
19 that.

20 MR. HOOK: You're beyond belief,
21 Mr. Katarincic. You would suggest that we
22 wrote bring documents up here in a box and then
23 take them back and remove documents overnight.

24 MR. KATARINCIC: Nobody suggested
25 anything.

1 MR. HOOK: You asked would they
2 remain intact, and I said yes, and you go well,
3 I don't know if I believe that. That
4 suggestion is so infantile.

5 MR. KATARINCIC: I didn't say that,
6 sir.

7 MR. HOOK: He can read it back. See
8 what he said.

9 MR. KATARINCIC: I believe so.

10 - - - -

11 (The record was read back by the Reporter.)

12 - - - -

13 MR. HOOK: You're insulting
14 intelligent people here, Mr. Katarincic.
15 You're unbelievable.

16 MR. KATARINCIC: No one is insulting
17 anybody. Your theatrics I'm sure are
18 appreciated in Greene County, but not beyond
19 that. I think you're making a grave mistake by
20 leaving here. Courts do not tolerate this
21 walking out of a deposition like this.

22 MR. HOOK: Mr. Katarincic, you
23 refused to cease inquiring into the financial
24 arrangements between my client and myself,
25 after I requested you to cease probably ten

1 times. That kind of conduct is on top of your
2 repeated refusal to simply ask a question and
3 get an answer and go on. You just came to the
4 limits of what's appropriate here. Until you
5 can agree on how to conduct yourself, your
6 attempt to hijack these records after they were
7 brought up here in good faith under a set of
8 ground rules, it's simply not possible to go
9 forward.

10 MR. KATARINCIC: Nobody is hijacking
11 anything. They're under the custody of the
12 reporter. He has a fiduciary duty to the
13 Court, not to you or to me. Let me make one
14 other point, only one time was a question asked
15 about arrangements, and you objected, and never
16 again was anything asked about the details of
17 her arrangement with you. I did use the word
18 contingent once, you objected, and I never
19 asked it again.

20 MR. HOOK: I think this record will
21 speak for itself that you repeatedly attempted
22 to delve into the arrangement for the legal
23 fees between my client and myself.

24 MR. KATARINCIC: Mr. Shreckengast, on
25 the record, how do you propose to handle the

1 fact that these boxes, which are in your
2 custody, are being removed? Are you going to
3 contact a lawyer for your reporting service?

4 THE REPORTER: I'll wait and see if
5 the parties resolve it, and if they don't, I'm
6 sure I'll be notified.

7 MR. KATARINCIC: We're going to
8 notify the Court that you let them go, I'll put
9 that in my motion, and you're going to say you
10 believe voluntarily.

11 MR. HOOK: Are you going to tell him
12 what to say?

13 MR. KATARINCIC: No, I'm saying are
14 you going to say you agreed to removing them?

15 THE REPORTER: I put my understanding
16 on the record.

17 - - - -

18 (There was a discussion off the record.)

19 - - - -

20 MR. KATARINCIC: There's one document
21 that's marked as an exhibit, one little piece
22 of paper. The agreement of April 15, I'm
23 sorry, April 5, '98, between Roy Brendel and
24 Clinton Piper, one page, calling for the
25 payment of \$300 in phase one and \$300 in phase

1 two, actually \$300 in each phase. That
2 document is an exhibit, and Mr. Hook insists on
3 taking it from the custody of the reporter.

4 MR. HOOK: This document is labeled
5 Original Letters National Register Nomination.
6 They are the Brendels' personal papers that are
7 part of the history of their efforts to get
8 this property placed on the Historic Register.
9 The ground rules established were that these
10 documents were to be identified as to which
11 ones they wanted copies made of, and we would
12 arrange to have copies made of them. This
13 document could easily be copied and made an
14 exhibit. There would be no significant change
15 in its --

16 MR. KATARINCIC: Do you want me to
17 copy it now?

18 MR. HOOK: I'm quite happy for you to
19 copy it. You can copy everything in here.

20 MR. KATARINCIC: The whole document?

21 MR. HOOK: You can copy everything in
22 here. I'll tell you what, have it copied in
23 its entirety. There's certainly no objection
24 to any of the documents that you wish to retain
25 being copied, as I had earlier agreed with you.

1 MR. KATARINCIC: Then leave them
2 here, I'll copy them overnight.

3 MR. HOOK: Mr. Katarincic, I'm not
4 going to leave them here.

5 MR. KATARINCIC: Do it overnight, and
6 when Mr. Brendel comes back tomorrow, they'll
7 be here.

8 MR. HOOK: I'm sorry, Mr. Katarincic,
9 I simply don't trust you. And your conduct
10 certainly justifies that. Trying to hijack
11 these after they were brought up in good faith
12 to me is the height of improper legal practice.

13 - - - -

14 (Thereupon, the deposition was
15 adjourned at 2 p.m.)

16 - - - -

17

18

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22

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24

25

EXHIBIT B

**EXCERPTS OF DEPOSITION OF ROY BRENDL
(FEBRUARY 9, 2006)**

1 IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

2 CONSOLIDATION COAL COMPANY,)
3)
4 Plaintiff,)
5)
6 vs.)
7)
8 UNITED STATES DEPARTMENT OF)
9 THE INTERIOR, NATIONAL PARK) Civil Action
10 SERVICE,) No. 00-2120
11 and)
12)
13 CAROL D. SCHULL, individually)
and in her capacity as the)
Keeper of the National Register)
of Historic Places,)
and)
ROY BRENDEN and DIANE BRENDEN,)
Defendants.)

14

15 - - - -

16 DEPOSITION OF: ROY BRENDL

17 - - - -

18

DATE: February 9, 2006
Thursday, 9:30 a.m.

20

21 LOCATION: Thorp Reed & Armstrong
 14th Floor
22 One Oxford Centre
 Pittsburgh, PA 15219

23

23 TAKEN BY: Consolidation Coal Company

24

25 REPORTED BY: Keith G. Shreckengast, RPR
Notary Public
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1 realizing the nature of his conduct yesterday
2 should not be repeated.

3 MR. HOOK: I did call you,
4 Mr. Katarincic, and left a message on your
5 phone system asking you to return the call.

6 MR. KATARINCIC: Which I did.

7 MR. HOOK: You didn't return it to
8 me.

9 MR. KATARINCIC: Well, you were busy
10 on the phone they said.

11 MR. HOOK: I wasn't in my office in
12 the afternoon.

13 MR. KATARINCIC: That's what they
14 said. You did not leave a message that you
15 would not be here or that you would be here, no
16 message at all. Of course when I saw your call
17 I thought that was a cover, and apparently I
18 was right.

19 BY MR. KATARINCIC:

20 Q. What's your name, please?

21 A. Roy Brendel.

22 Q. Where do you live, sir?

23 A. Spraggs.

24 Q. What is your occupation?

25 A. I'm retired.

1 tends to go down.

2 Q. What value did you put on it, sir?

3 A. I can't remember exactly, but -- we had no
4 idea, but it was a big acreage.

5 Q. You have no idea of the --

6 MR. HOOK: Don't interrupt him.

7 MR. KATARINCIC: I'm trying to help
8 him move it along.

9 MR. HOOK: He doesn't need help,
10 Mr. Katarincic.

11 MR. KATARINCIC: Please control
12 yourself.

13 MR. HOOK: I want you to not
14 interrupt him.

15 BY MR. KATARINCIC:

16 Q. Finish your answer, please.

17 A. I think it was probably about 300,000, we
18 allowed for that.

19 Q. 300,000?

20 A. Well, I'll tell you what, in foresight -- or in
21 hindsight, I think I was a little bit
22 conservative. Because they did, DEP finally
23 ordered Consol to fill in that hayfield. And
24 you should have seen the triaxle dump trucks
25 coming in there to fill that baby up.

- 1 Q. What's the size of it, sir?
- 2 A. 18 x 36. California play pool, that means the
- 3 depth was just below five feet.
- 4 Q. What did you pay to build the pool?
- 5 A. I think it was around twenty-some thousand.
- 6 Q. Say 25, is that fair?
- 7 A. Yes.
- 8 Q. Anything else included in that 3 million?
- 9 A. I had a basketball court.
- 10 Q. How much do you have for that?
- 11 A. Maybe a thousand dollars for the basketball
- 12 court.
- 13 Q. What else, please?
- 14 A. I have rock walls, and I'm sure the rock might
- 15 not have been damaged, but you've got to get a
- 16 laborer to get in there. I put two years in
- 17 that wall.
- 18 Q. Was there any damage to that wall, visible
- 19 damage?
- 20 A. The one rock wall I'm thinking about, I don't
- 21 think there was any physical damage. It was
- 22 kind of leaning down a little bit. But at the
- 23 time I didn't know what was going to happen to
- 24 it.
- 25 Q. So you put a number on that rock wall also?

1 A. Yes.

2 Q. How much, sir?

3 A. Probably a thousand dollars, labor.

4 Q. Anything else?

5 A. My outside fences.

6 Q. Barbed wire fences?

7 A. Yes.

8 Q. How many feet?

9 A. 133 acres. I don't know how many feet that is.

10 Q. All of the fence was affected by the mining?

11 MR. HOOK: Hold it, excuse me, Joe,

12 you're misinterpreting his testimony there.

13 He's testifying about the proposal they put

14 together before the mining took place, not

15 after the mining. That's what he's testifying

16 about, so don't say --

17 MR. KATARINCIC: Now that you said

18 it, I understand what you're saying. He did

19 not say that, but I presume you want him to say

20 that.

21 BY MR. KATARINCIC:

22 Q. So why don't we say that's what you're saying?

23 A. You asked me --

24 MR. HOOK: Wait a minute. We'll go

25 back in the testimony. And you be quiet and

1 let me complete what I'm saying. You're asking
2 him where he got this 3 million dollar number,
3 Mr. Katarincic. That number was offered at a
4 meeting with Mr. Jenkins before the mining took
5 place. That's the testimony of record. If you
6 deny that, we'll go back through here in detail
7 and he can read it back to you. Don't insult
8 me with inaccurate statements on the record.

9 MR. KATARINCIC: All I asked you was
10 what made up the \$3 million.

11 MR. HOOK: Correct, and that was an
12 offer made before the mining. Understood?

13 BY MR. KATARINCIC:

14 Q. Do you hear what he wants you to say?

15 MR. HOOK: No, do you understand,
16 Mr. Katarincic? You apparently want to
17 misrepresent the record. Do you understand
18 that now, or do we need to go back and
19 establish the record accurately?

20 MR. KATARINCIC: Please keep your
21 voice down.

22 MR. HOOK: Please answer my question.

23 MR. KATARINCIC: You're acting very
24 unprofessional.

25 MR. HOOK: No, I'm not, you are. You

1 A. No.

2 Q. Is that building damaged?

3 A. That building leans a little bit, but that
4 particular building is up off the floor. I had
5 rebuilt that floor myself. So it held up
6 pretty good. There's some minor damage to the
7 bottom of it.

8 Q. You rebuilt the floor since the mining?

9 A. No, before, before the mining, exactly the way
10 the Major built it with raw cut lumber.

11 Q. Anything else that was damaged by this mining
12 that you're making the claim for \$3 million
13 for?

14 A. I'm not making a claim for \$3 million.

15 MR. HOOK: Objection, that's
16 misrepresenting the record. The \$3 million was
17 offered prior to the mining at a negotiating
18 session. That's what we've been talking about
19 for over an hour now. At no time has he talked
20 about any estimate placed on the damages post
21 mining.

22 Q. What number did you put on repairing the
23 storage shed at the time you put the \$3 million
24 number together?

25 A. I can't recall.

1 A. It says compensatory damages in excess of 1,800
2 for the --

3 Q. \$1,800,000?

4 A. For the damage to the Brendels' home, and in
5 excess of \$1,200,000 for the damage to the
6 Brendels' other buildings and property, in a
7 total sum to be determined at trial.

8 Q. Those two numbers, if you add them up, are \$3
9 million?

10 A. Yes.

11 Q. So would it be correct to say that in this
12 lawsuit you are claiming \$3 million for damage
13 to the house, your home, and the other
14 buildings and property?

15 MR. HOOK: No, that's not --
16 objection, that's just a misrepresentation of
17 the statement in the document. I'm not going
18 to permit you to distort that. It says quite
19 clearly the damages are in excess of
20 \$1.8 million for damages to the house, and in
21 excess of 1.2 for the rest of the property.
22 And this is a total sum to be determined at
23 trial. That's what it says, Mr. Katarincic,
24 not what you're trying to twist it to.

25 MR. KATARINCIC: Mr. Hook, I really

1 feel sorry for you.

2 BY MR. KATARINCIC:

3 Q. Let's go back to A. The two numbers set forth
4 come to \$3 million, do they not?

5 A. Yes, they do.

6 Q. And you and I previously, in enumerating what
7 went into the \$3 million, included all of the
8 structures and so forth --

9 MR. HOOK: Objection, Mr. Katarincic.
10 Again you are misconstruing.

11 MR. KATARINCIC: I didn't finish my
12 question.

13 MR. HOOK: Finish it, then I'll
14 object.

15 MR. KATARINCIC: Please try to
16 contain yourself, Mr. Hook.

17 MR. HOOK: It's very hard with your
18 type of conduct, Mr. Katarincic.

19 MR. KATARINCIC: If you need another
20 break, I'll be happy to give it to you.

21 BY MR. KATARINCIC:

22 Q. The amount of the \$3 million which was given to
23 Mr. Jenkins and Mr. Kramer in Hook's office,
24 that covered what, all your damages including
25 the buildings and land and wheat and hay and so

1 forth?

2 A. That was an estimate at that time.

3 Q. Of all physical damage?

4 A. Yes.

5 Q. Now what do you understand the \$3 million is
6 for here as set forth in paragraph 3 at page 16
7 of Exhibit 12 A?

8 A. It says to be determined at trial.

9 Q. What else does it say? Are you saying that the
10 amount could be less \$3 million; is that what
11 you intend to say here?

12 MR. HOOK: Your Honor --

13 A. It says in excess.

14 Q. So you think it could be more than 3 million?

15 A. I have to rely on my lawyer.

16 MR. HOOK: I object to this line of
17 questioning. The statement says what it says.
18 You don't need to ask this witness what it says
19 or what it might say.

20 Q. Tell me what makes up the demand for 1.8
21 million and 1.2 million as set forth in
22 paragraph 3 on page 16.

23 MR. HOOK: If you know.

24 Q. And don't take that as a clue for an answer.
25 That's what he intends it to be.

1 A. It says to be determined at trial.

2 Q. But what do you understand constitutes --

3 A. To be determined at trial. That's exactly what
4 it is.

5 Q. When you use the word 1.8 here, that number,
6 what did you understand it to be?

7 A. I don't know what you're talking about.

8 Q. What is included in the 1.8 million? When you
9 made a claim against Consol for 1.8 million and
10 1.2 million, tell me exactly what was included
11 within those numbers.

12 A. Just what it says here, in excess.

13 Q. Of? What is it for? What do they represent,
14 damage to what?

15 A. This statement says compensatory damages in
16 excess of 1,800,000 for the damages to the
17 Brendels' home, and in excess of 1,200,000 for
18 the damage to the Brendels' other buildings and
19 property in a total sum to be determined at
20 trial.

21 Q. What's the property you're referring to there
22 in that paragraph? Do you know, sir?

23 A. No, I don't follow you.

24 Q. What is included in the word property as you
25 use it in paragraph 3 A?

1 A. I don't know. I don't know what you're talking
2 about.

3 Q. You don't understand my question, or you don't
4 know what's included in the word?

5 A. Yeah, I don't understand your question.

6 Q. Well, you included the 1,800,000 damage to the
7 Brendels' home, and in excess of 1,200,000 for
8 damage to other buildings?

9 A. Yes.

10 MR. HOOK: That's not what it says,
11 it says other buildings and property.

12 MR. KATARINCIC: I'm asking him what
13 property means. Don't interrupt him.

14 BY MR. KATARINCIC:

15 Q. You say other buildings and property. What is
16 the property you're talking about?

17 A. I would assume it meant my property.

18 Q. What piece of your property? Describe it in
19 detail.

20 A. 133 acres.

21 Q. So it would be damage to the land itself?

22 A. I don't know.

23 Q. You don't know what it means?

24 A. No, I don't know.

25 Q. Okay, this is Roy Brendel Exhibit 13.

1 MR. HOOK: Just for the record, what
2 are we identifying as the earlier exhibits in
3 Roy Brendel?

4 MR. KATARINCIC: There was no other
5 exhibits. Those were for Mrs. Brendel's. 12
6 and 12 A were the last ones in her depo. This
7 is the first exhibit since Mr. Roy Brendel has
8 been deposed, but we're going to number it 13.

9 BY MR. KATARINCIC:

10 Q. Would you look at No. 13, please, and tell me
11 if you've ever seen that before.

12 MR. HOOK: It's about five till 12.
13 We're going to take a break for lunch now.

14 MR. KATARINCIC: Let's finish this
15 exhibit.

16 MR. HOOK: You can have him identify
17 it, then we'll go to lunch.

18 MR. KATARINCIC: I think we should go
19 a little longer. We didn't start until 10:30.

20 MR. HOOK: We got here at 8:30.

21 MR. KATARINCIC: What I will ask you
22 about is any coaching or discussions you had
23 concerning Exhibit 13 during your lunch hour,
24 so be prepared for that, because it's unusual
25 to take a break at this point.

- 1 the --
- 2 A. That's up to my lawyer.
- 3 Q. To the extent you're not satisfied?
- 4 A. That's up to my lawyer.
- 5 Q. Do you understand that if this order is
- 6 complied with, that you will receive no money
- 7 from Consol?
- 8 A. That's up to my lawyer. I don't know anything
- 9 about that.
- 10 Q. Do you understand that? Is that your
- 11 understanding?
- 12 A. Is what my understanding?
- 13 Q. That if this order is complied with fully, you
- 14 will receive no money from Consol in connection
- 15 with damage to the property?
- 16 A. I don't know that.
- 17 Q. You have not discussed that with anybody?
- 18 A. No.
- 19 Q. Now do you have any documents to show us
- 20 visually the extent of damage to your property?
- 21 A. I brought you all the documents that you
- 22 requested.
- 23 Q. Are they here today?
- 24 A. They're in the car.
- 25 Q. You have pictures or something?

1 A. Yes, the same pictures, the pictures and tapes
2 that were here yesterday.

3 Q. I understand that. Do you have them so you can
4 go over them with me?

5 A. We have to go get them. They're in Mr. Hook's
6 car. Should we go get them?

7 MR. HOOK: We're not going to get
8 them, Mr. Katarincic. I explained to you
9 yesterday, given the way you tried to handle
10 them yesterday, until we agree on a method for
11 addressing those documents, they're not going
12 to be brought into this office again. They're
13 available for you to review at any time at my
14 office.

15 Q. Let me ask you, what evidence do you have to
16 show visually the damage to this property?
17 Describe it in detail for me.

18 A. I complied with everything that you asked for.

19 Q. I'm asking you what documents do you have,
20 pictures, anything?

21 A. It's all in that, in those boxes.

22 Q. Sir, please tell me, what do you have in
23 writing, pictures?

24 A. I can't remember all them.

25 Q. Give me a general description of them.

1 A. The items that you requested, they're in the
2 boxes.

3 Q. But I mean as to reflecting the damage, what do
4 you have in those boxes?

5 A. Just what you asked for.

6 Q. And what is that, as you understand it?

7 A. The documents that are in the boxes.

8 Q. What documents are there in the boxes that
9 reflect the damage that the structures have
10 incurred as a result of mining?

11 MR. HOOK: Are you asking him to
12 describe in general?

13 MR. KATARINCIC: Just general, that's
14 what I said to him.

15 MR. HOOK: Pictures, videotapes, et
16 cetera?

17 MR. KATARINCIC: Obviously, that's
18 what I said to him.

19 BY MR. KATARINCIC:

20 Q. General description of what you have. Now that
21 he's made his observations, I think you'll have
22 an answer, but go ahead.

23 A. I brought up the boxes, the boxes of tapes and
24 the boxes of pictures, and the boxes of
25 documents that you asked for.

1 Q. Where are they? They're in the car?

2 MR. HOOK: He explained they're in my
3 car. They'll be made available to you at my
4 office.

5 MR. KATARINCIC: Your case is in
6 Pittsburgh.

7 BY MR. KATARINCIC:

8 Q. Let me ask you, what are they, just generally
9 tell me. What are these documents that support
10 and reflect the damage incurred to the
11 structures?

12 A. They're in the boxes.

13 Q. In the boxes. Are they pictures, photographs?

14 A. There are pictures.

15 Q. There are photographs. Do you have any idea of
16 approximately how many? 100? You don't need
17 to be precise, just a rough number.

18 A. There's got to be over 100.

19 Q. Do some of those pictures show the condition of
20 the property before the mining took place?

21 A. Yes.

22 Q. And how many of those, roughly, pictures would
23 you have?

24 A. I can't remember exactly how many.

25 Q. You have pictures showing the condition of the

1 property following the completion of the
2 mining?

3 A. They're all in the boxes.

4 Q. But you do have such pictures?

5 A. I have all the pictures that you asked me to
6 bring are there.

7 Q. But I'm asking do you have, whether they're
8 here or not here, do you have in your
9 possession or control photographs showing the
10 damage after the mining was completed?

11 A. I brought the boxes here yesterday.

12 Q. Is your answer yes to my question?

13 A. My answer is I brought the boxes here
14 yesterday.

15 Q. I understand that, but do you have --

16 MR. HOOK: He's answered it.

17 MR. KATARINCIC: He hasn't answered.

18 He's just repeating what he was told to say.

19 BY MR. KATARINCIC:

20 Q. You're under oath, you have to tell me, do you
21 have photographs anywhere?

22 A. I complied and brought the things that you
23 asked for in the boxes.

24 Q. That's fine, but do you have any photographs,
25 tell me yes or no, showing the condition after

- 1 the mining?
- 2 A. I have all the photographs that you asked for
- 3 in that box.
- 4 Q. And are there photographs showing the condition
- 5 of the structures after the mining?
- 6 A. You can see the photographs yourself when you
- 7 open the box.
- 8 Q. And there are videotapes you said, your lawyer
- 9 said?
- 10 A. There are tapes.
- 11 Q. And do they reflect the damage to the
- 12 structure?
- 13 A. Those tapes were taken the whole time, since
- 14 the beginning of the mining.
- 15 Q. But do they reflect damage to the structures?
- 16 A. Yes, some of them.
- 17 Q. How many of those tapes do you have that
- 18 reflect damage, half a dozen, a dozen?
- 19 A. I'd say about 20.
- 20 Q. And that would be videotapes showing the
- 21 structure both before and after the damage, or
- 22 just after the damage to the structures?
- 23 A. There were pre-mining videos taken.
- 24 Q. They're included in the videos you have?
- 25 A. I think I included all the tapes.

1 Q. So there were the tapes that you have, if they
2 include pre-mining conditions, you would have
3 taken them?

4 A. Yes.

5 Q. Are there any writings that you have here that
6 reflect the extent of the damage?

7 A. I have just the stuff that's in the boxes.

8 Q. Just in the boxes?

9 A. That's it, all the documents you requested that
10 I had, I put in the boxes.

11 Q. We yesterday identified with Mrs. Brendel
12 Exhibits 1 and 1A, the notices that were served
13 on her. These are identical to those served on
14 you. Would you look at those and tell me --
15 those items listed on Exhibit A, what's in the
16 boxes that are not here today?

17 A. I packed those boxes. I can't remember every
18 little thing that's in there. I complied with
19 what you asked. I put all the documents that I
20 had in the boxes.

21 Q. Would you go to the exhibit, please. Go to
22 paragraph 1. As an example, we asked you in
23 paragraph 1 any documents which support your
24 claim in paragraph 8 in the Second Amended
25 Answer, Counterclaim and so forth.

1 A. That's all lawyer stuff.

2 Q. Did you go over in determining what documents
3 exist?

4 MR. HOOK: You can't ask him what he
5 did with his attorneys.

6 Q. I don't care what you did with your attorney.
7 All I want to know, when you got this notice,
8 did you search around your house or office or
9 wherever to see what you had within these
10 categories of Exhibit A?

11 A. My lawyer has taken care of all of those type
12 things. I've got enough to deal with.

13 Q. Did you or did you not is all I'm asking? If
14 your answer is no, tell me. If your answer is
15 yes, tell me. Did you search for these
16 documents?

17 A. My answer is my lawyer is handling all that.

18 Q. Did you furnish any documents to your lawyer in
19 response to Exhibit A?

20 MR. HOOK: He's already answered that
21 he provided all of his documents in the boxes
22 that were brought up here. That's the answer
23 to all these questions.

24 MR. KATARINCIC: I have a right to
25 ask these questions.

1 BY MR. KATARINCIC:

2 Q. Did you search for the documents in Exhibit A?

3 A. My lawyer has all this stuff here.

4 Q. Did you search around your office, your car,
5 wherever you keep the stuff?

6 A. I complied with what I was asked to put all the
7 documents that you asked for, I put them in the
8 boxes.

9 Q. So you did go to try to find them?

10 A. All the things that I brought up were the
11 things that you asked for me that I have.

12 Q. And you, yourself, made a search for them?

13 A. The things that are in the boxes, I made a
14 search for them.

15 Q. Did you search to see if you have other things
16 listed in Exhibit A which are not in the boxes?

17 MR. HOOK: I object, he just said he
18 brought everything he had and put them in the
19 boxes.

20 Q. Do you have anything in those boxes which are
21 not here? In connection with paragraph 5 of
22 the exhibit, documents supporting the claim in
23 paragraph 55 that Thomas Hoffman made or caused
24 to be published false and misleading
25 statements, is there anything in those boxes

1 concerning that?

2 A. I put everything in the boxes that was on the
3 paper that you guys submitted.

4 Q. So your answer is yes as to number 5?

5 A. My answer is all the documents I have I put in
6 the box.

7 Q. But in that box are there any documents
8 relating to paragraph 5 of Exhibit A?

9 A. I put everything in the box.

10 MR. HOOK: You don't have to answer
11 that question.

12 Q. Tell me, are there documents there in response
13 to paragraph 5 of Exhibit A? That is a
14 question you have to answer.

15 MR. HOOK: Objection, he doesn't have
16 to answer that question.

17 A. I answered it.

18 Q. Specifically is there anything in those boxes
19 supporting and responding to paragraph 5 of
20 Exhibit A?

21 MR. HOOK: Don't answer the question.

22 MR. KATARINCIC: I take it if I asked
23 about every one of those numbers under Exhibit
24 A, I'd get the same answer, he doesn't have to
25 answer?

1 MR. HOOK: Correct.

2 BY MR. KATARINCIC:

3 Q. Do you know whether, in those boxes that are
4 not here today, there are documents encompassed
5 by paragraphs 1, 2, 21 of Exhibit A to the
6 notice of deposition?

7 A. I put everything in that box that I had that
8 was asked of me.

9 Q. I understand.

10 A. I put all my documents in those boxes.

11 Q. I want to know whether you found any, as an
12 example --

13 A. When you go through the boxes, you can
14 determine whether they apply or not. I gave
15 all the documents I was asked to give. And my
16 lawyer handles all the ones that pertain to
17 lawyer stuff.

18 Q. As an example, paragraph 13 of Exhibit A, to
19 the extent not produced in response to our
20 request, any documents supporting, reflecting,
21 relating to or referring to the alleged mine
22 subsidence damages that plaintiff claims Consol
23 Mining caused or for which plaintiffs are
24 claiming damages seeking reimbursement from
25 Consol in this action. Were there any

1 documents concerning that?

2 A. That's lawyer stuff to me.

3 Q. Were there any comments, though, in that box
4 concerning that paragraph?

5 A. All the things that were asked of me, any
6 documents that I had, I put in the box.

7 Q. I understand that.

8 MR. HOOK: I'm going to object.

9 You're asking him to make some kind of legal
10 conclusion as to whether one particular
11 document applies to paragraph 14 or not. He's
12 not qualified and not required to make those
13 kind of legal conclusions. So I'm going to
14 tell him not to answer that type of question.

15 MR. KATARINCIC: You understand, I
16 didn't ask him whether it applies to paragraph
17 13, I asked him does he have any documents as
18 identified in paragraph 13, there's a
19 difference.

20 MR. HOOK: You're saying he's got to
21 categorize the documents as to whether or not
22 they apply to paragraph 13. He's not going to
23 do that. He's not some kind of legal expert.

24 MR. KATARINCIC: I'm not going to
25 quarrel with you.

1 MR. HOOK: He's not going to answer
2 those questions.

3 MR. KATARINCIC: You're reshading the
4 argument in a way favorable to you.

5 BY MR. KATARINCIC:

6 Q. All I'm saying is in those boxes are there any
7 documents that come within the purview of
8 what's described here in paragraph 13, which is
9 mine subsidence?

10 MR. HOOK: He's not going to answer
11 it.

12 Q. Those documents are in Mr. Hook's car, you say,
13 down in the building here? Is that what you
14 said?

15 A. Yes.

16 Q. Parked in the building here where this
17 deposition is going on?

18 A. Yeah, where he parked his car.

19 Q. But I mean they're in town here?

20 A. Yes.

21 MR. KATARINCIC: Many of my questions
22 that I have set forth here pertain to
23 documents. So I've been basically prohibited
24 from taking this deposition because of that
25 conduct.

1 MR. HOOK: For the record, I'd like
2 to state that the conduct that has caused the
3 documents not to be here is Mr. Katarincic's
4 conduct yesterday, where he attempted to
5 improperly hijack those documents and keep them
6 here in his office, contrary to the original
7 agreement of them being brought up here. Until
8 such time as Mr. Katarincic can agree to an
9 appropriate method to handle the documents,
10 they will remain in my custody, at my office,
11 where he is welcome to come and examine them at
12 his convenience, upon making appropriate
13 arrangements.

14 BY MR. KATARINCIC:

15 Q. But right as you sit here today, you have no
16 documents in this room in response to this
17 notice of deposition, do you?

18 A. I put the documents, as was asked for, I
19 brought them yesterday.

20 Q. Are they in the room here today?

21 A. I'm not going to answer that question.

22 Q. You have to answer me. Are they here? You
23 have no choice what you do or don't want to
24 answer, sir. It's a fact, are those documents
25 here right now in this room?

1 A. I brought them yesterday.

2 Q. Sir, are they here now, please?

3 A. They're in the boxes.

4 Q. Are the boxes here?

5 A. I'm not going to answer that question.

6 MR. KATARINCIC: It seems to me, I've
7 never tried before, but this is a perfect
8 opportunity for contempt proceedings against
9 this witness. His last several questions
10 reflected to me he's obstreperous, doesn't want
11 to cooperate. And is apparently, for some
12 reason, refusing to give evidence to me. I'm
13 going to terminate this, but I'm going to do
14 two things; first move for sanctions, and
15 second, move to have you held in contempt. And
16 I mean it. We'll leave it at that.

17 This deposition will be terminated in
18 light of the conduct of the witness, his
19 refusal to answer questions. Thank you very
20 much.

21 MR. HOOK: The record is not closed
22 yet.

23 MR. KATARINCIC: The record is going
24 to continue open.

25 MR. HOOK: Let the record show that

1 as I indicated yesterday to Mr. Katarincic on
2 the record, that those documents would be
3 removed until such time as he agreed to an
4 appropriate method for the handling of them.
5 He has not agreed as of this date. He
6 apparently does not want to agree. The
7 documents are available for him at our office,
8 and will remain available to him at our office
9 until such time as he agrees to an appropriate
10 methodology to handle these documents, which
11 are unique, irreplaceable, family documents.
12 That have historical value, which have family
13 value, which the Brendels do not want to have
14 leave their custody without appropriate
15 safeguards.

16 I will further add that yesterday
17 when we specifically asked Mr. Katarincic not
18 to delve into these boxes outside of our
19 presence, he immediately proceeded to go
20 through the boxes at lunch hour when we were
21 out of the room, in direct contravention to our
22 request. He then further attempted to force
23 the documents to remain here in this building,
24 in his offices, in spite of our earlier request
25 that he identify what documents he would like

1 to have copied and we would appropriately have
2 them copied.

3 That kind of conduct shows complete
4 lack of consideration for the value of these
5 documents to the Brendels, and I believe
6 justifies our concerns about bringing them and
7 making them available. We would be willing to
8 bring them to this room today, except for the
9 fact that yesterday we were confronted with the
10 possibility of not being able to remove the
11 documents from the room. So accordingly, we
12 feel that until such time as appropriate
13 arrangements are made, I will have to stand on
14 this position.

15 MR. KATARINCIC: Much of what
16 Mr. Hook said is false. We did delve into the
17 documents. I told him I was going to delve
18 into the documents. The documents were in the
19 custody of the reporter, as has been true
20 throughout these proceedings. Mr. Hook thinks
21 he's the dominant force here. Why he thinks
22 that, I think I know. I have offered to have
23 them sent out to a commercial production
24 company of the highest quality. He refuses to
25 do that. Somebody is going to have to copy

1 these things, whether I designate them or who.
2 I told him my people right across the street
3 are ready to take these on, and they'll be done
4 within the day. He's refused to do that. I
5 can't help the guy. I'm entitled to have those
6 here. He does not set the ground rules. We
7 will move to have him compelled to bring those
8 here, to have both of these witnesses brought
9 back, and move for sanctions and contempt. And
10 that I'm serious about.

11 You can make all the speeches you
12 want about me stealing documents as you did
13 yesterday, make all the speeches you want about
14 embargo. It's utterly meaningless to me,
15 because none of it has any merit.

16 MR. HOOK: Mr. Katarincic has never
17 offered to have them copied at any place. The
18 specific discussion was that they would be
19 identified, and I would arrange to have them
20 copied, and provided to him at his expense.
21 And he refused to agree to that.

22 MR. KATARINCIC: The record will
23 speak for itself. That point was covered
24 yesterday. As of this morning when I pointed
25 out the falseness of his statements, he said

1 nothing.

2 MR. HOOK: I'm saying it now. And if
3 Mr. Katarincic wants to review the record, he's
4 certainly welcome to. As far as Mr. Brendel
5 being uncooperative, Mr. Katarincic simply
6 seems to want to ask him about questions that
7 he is not required to answer in terms of trying
8 to categorize whether a particular document
9 falls into a particular category of questions.

10 MR. KATARINCIC: That's a false
11 statement, I did not ask him that. You'll have
12 a chance to expound to the court very shortly
13 on that Mr. Hook. I don't mean a court in
14 Greene County, I mean a Federal Court.

15 MR. HOOK: We're done.

16 MR. KATARINCIC: See you again.

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18 (Thereupon, the deposition was
19 concluded at 1:22 p.m.)

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